IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2416 OF 2007

Balasaheb Rajaram Mali ...Petitioner

Versus

Ramdas Goverdhan Chavan & Ors. ...Respondents

Shri R.V.Govilkar alongwith Sarang S. Aradhye for the Petitioner.
Shri A.S.Desai for the Respondent Nos.1 and 2.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 25, 2007.

P.C.:

1. Rule. Shri Desai waives service for the first and second Respondents who are the Petitioners in the Election Petition. The Respondent Nos.3 to 6 and 31 are formal parties. The rest of the Respondents are elected candidates whose election has been challenged by the first and second Respondent. Considering the nature of the order which I propose to pass, notice to other Respondents may not be necessary.

2. The challenge in this Writ Petition under Article 227 of the Constitution of India is to the order passed by the Additional Commissioner, Pune Division on 28th March, 2007 by which the Application dated 15th February, 2007 made by the Respondent Nos.4 to 27 in the Election Petition has been rejected. The Application is rejected on the ground that a similar application made

by the Co-operative Sugar Factory (the Respondent No.6 herein) has been rejected by a separate order.

3. The contention of the learned counsel for the Petitioner who is the original Respondent No.22 in the Election Petition is that the application ought to have been considered on merits. The contention of the learned counsel for first and second Respondents is that the Application was made at the fag end of the trial. He submitted that the documents which are sought to be exhibited are of suspicious nature. He submitted that some of the documents on record does not bear signature of the concerned authority and therefore, the Commissioner was right in rejecting the said Application.

4. By separate order I have already held that similar application made by the sixth Respondent Co-operative Sugar Factory could not have been entertained as the said Co-operative Sugar Factory is only a formal party to election dispute. Only on the basis of the order passed on the Application made by the said Co-operative Sugar Factory, the Application made by the Respondent Nos.4 to 27 in the election Petition has been rejected. In fact, authority has merely observed that in view of the order passed on the application made by the Sugar Factory the said Application stands

disposed of.

5. In my view, since the Application was made by the parties who were contesting the Election Petition, the Commissioner should have decided the Application on merits. Whether the documents could have been exhibited or not and whether the record is required to be called for are the questions to be decided by the Commissioner. In my view, the Application of the contesting Respondents in Election Petition ought to have been decided on its own merits.

6. Hence, I pass the following order:

(i) The impugned order dated 28th March, 2007 is quashed and set aside.

(ii) The Application dated 15th February, 2007 filed by the Respondent Nos.4 to 27 in the election dispute shall be decided by the Commissioner on its own merits. The Application shall decided within a period of one week from the production of an authenticated copy of this order.

(iii) The hearing of the election Petition shall be concluded expeditiously.

(iv) The Writ Petition is partly allowed in above terms.

JUDGE